# In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1070

FRANK PETER BALISTRIERI, PETITIONER

*v.*

UNITED STATES OF AMERICA

## MEMORANDUM IN RESPONSE TO PETITION FOR REHEARING

This memorandum is submitted pursuant to the order of this Court of May 26, 1969, requesting the Solicitor General to file a response to the petition for rehearing.

On receipt of the petition for rehearing in this case, we caused a further investigation to be made concerning possible electronic surveillance affecting petitioner. We have been advised that petitioner Balistrieri was overheard during the course of an electronic surveillance of the premises at 645 North Michigan Avenue. We were not aware of this overhearing at the time the government's brief in opposition to the petition for writ of certiorari was filed.



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In these circumstances, we believe that it would be appropriate for the Court to vacate the order denying certiorari, grant the petition, vacate the judgment below and remand the case to the district court for further proceedings.

Respectfully submitted.

ERWIN N. GRISWOLD,
*Solicitor General.*

JUNE 1969.

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